

November 10, 2008

**OFFICE OF THE HEARING EXAMINER  
CITY OF RENTON**

**REPORT AND RECOMMENDATION**

APPLICANT/OWNER: Football Northwest LLC  
505 Fifth Ave South, Ste. 900  
Seattle, WA 98104

CONTACT: Alan Foltz  
Waterfront Construction, Inc.  
205 NE Northlake Way, Ste. 230  
Seattle, WA 98105

LUA-08-098, ECF, SMC, SM

LOCATION: 12 Seahawks Way (5015 Ripley Lane North)

SUMMARY OF REQUEST: Shoreline Conditional Use Permit and a Shoreline Substantial Development Permit for the installation of an approximately 1,100 foot floating safety barrier on the shore of Lake Washington in association with the Seattle Seahawks Headquarters and Training Facility.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on October 21, 2008.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

**MINUTES**

*The following minutes are a summary of the October 28, 2008 hearing.  
The legal record is recorded on CD.*

The hearing opened on Tuesday, October 28, 2008, at 9:01 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<b><u>Exhibit No. 1:</u></b> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<b><u>Exhibit No. 2:</u></b> Vicinity Map
<b><u>Exhibit No. 3:</u></b> Zoning Map	<b><u>Exhibit No. 4:</u></b> Site Plan
<b><u>Exhibit No. 5:</u></b> Detail View	<b><u>Exhibit No. 6:</u></b> Concrete Anchor Detail

<b><u>Exhibit No. 7:</u></b> Barrier Float Detail	<b><u>Exhibit No. 8:</u></b> Determination of Non-Significance – Mitigated, Mitigation Measures
<b><u>Exhibit No. 9:</u></b> Shoreline Substantial Development Permit	

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Planning Division, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The project consists of a floating safety barrier, which would be installed in conjunction with the Virginia Mason Athletic Center, Seattle Seahawks Headquarters and Training Facility. It is located in the COR zone on an approximate 16.5 acre site. It is located on Seahawks Way on the shoreline of Lake Washington. This barrier would protect the shoreline from excessive disturbance of the shallow aquatic habitat in the area and prevent vessels, swimmers and waders from coming in contact and becoming entangled in the various debris that is submerged along the shoreline in this area.

The barrier would be approximately 1,100 feet in length, it is proposed to be attached to the newly constructed Seahawks pier and would extend approximately 930 feet to the southwest, wrap around four existing pilings and turn inland approximately 100 feet and be attached by a screw bolted into the shoreline. The floating barrier would be attached to six concrete anchors lowered to the lake bottom. Equipment used in this project would include a tugboat, a construction crane mounted on a barge, a work skiff and various small power and hand tools.

This anchor system was chosen over other systems due to the soft bottom of the lake in this area, the weight of the concrete anchors would eventually cause them to sink into the soft bottom. The floating barrier system would be light orange in color and are in approximately nine-foot sections.

It appears that boaters are attracted to the practice site and this is a unique protective measure. The barrier has been proven to prevent vessels from entering restricted or unsafe areas.

The Examiner questioned if the barrier would be visible at night, lights used so people will not run into it.

Mr. Wasser stated that it would be light orange in color so it would be visible. The ERC issued a Determination of Non-Significance – Mitigated with 2 measures. One of those measures required the use of a color that complements the shoreline.

The project appears consistent with the Shoreline Conditional Use and conforms to the City Master Plan.

The Examiner stated that he is concerned about creating a precedent. Are people allowed to cross over certain adjacent properties in the lake, even though often property lines do go out into the lake itself? Is access being barred to kayaks and other boaters that should have access to these 1,000 linear feet? Actually, there is 30,000-100,000 square feet of water surface that is being cut off.

Mr. Wasser stated that the barrier would be floating between 30 and 100 feet off shore in 3-9 feet of water. It would close off that are to all boaters including kayakers. The nature of the shape of the shoreline dictates the 30 to 100 feet of closure.

Roger Pearce, Foster Pepper, 1111 Third Avenue, Ste 3400, Seattle 98101 stated that he represents Football Northwest. He introduced Mr. Alan Foltz with Waterfront Construction, the designers of the safety barrier. Mr. Carl Hadley of Cedar Rock is also present and is the Fisheries Biologist that has worked on this project.

This is a unique situation because it is a professional football team and is the only professional sports facility on Lake Washington or on a shoreline in Washington. There is more than anticipated boat traffic, mostly people looking at the new facility, people wanting to see the team practicing outside in the open air fields. The training camp takes place during the summer and throughout the season during the week the team practices at the facility on the outdoor fields.

This part of the lake is extremely shallow, in most places it runs 3 to 6 or 7 feet deep. There are a lot of contaminated sediments from the old Quendal Mill operation. The sediments in front of this property were not so contaminated that ecology required clean up in that area. It would be best if these were not stirred up by prop wash. There also is a great amount of submerged debris that boats and kayakers could run into. Some have been removed, some have broken off just under the water line. The barrier would keep people and powerboats from getting too close and damaging the shoreline.

Regarding lighting of the barrier, it will be posted on navigation charts that will inform boaters of its location. The US Coast Guard may require lights, they have not talked to them about it as yet. They were hoping to make the barrier a bright color rather than a subdued one. Perhaps they can go with a bright green or white that would be more visible.

Alan Foltz, Waterfront Construction, 205 NE Northlake Way, Ste. 230, Seattle 98105 stated that he is in charge of the permit development for this project. They have been successful with their permits and the Corps of Engineers who are in their final review stage. They are almost ready to issue the Corps Permit. If the Corps of Engineers are not satisfied with their findings, then the Department of Ecology will be called to do further review of the project.

The barrier would be 80% visible and so lights were not initially proposed, they are awaiting comments from the Coast Guard. Various colors are available, green is available and a standard color used for floats. There are also custom colors. The length of the barrier will be approximately 950 feet, the intent was where it goes out away from the shore it goes around some existing dock piling that is already in the lake and then it would come back straight to the shore.

The sewer line in the lake is farther south of the last anchor and some 40-80 feet from the shoreline.

The Examiner asked if the public was generally allowed to cross the water in this area?

Mr. Pearce stated State does allow the public to fish, float, or swim in waters of the State that has been modified by the Shoreline Management Act. If a dock or pier is installed, that impediment to navigation is lawful and does not violate the public duty doctrine.

On Exhibit 5, upon questioning by Mr. Pearce, Mr. Foltz pointed out the dotted line that indicates the Metro Sewer Line in Lake Washington near the project site. The depth of water at the southern end of the safety barrier is shown to be 3'3".

Carl Hadley, Cedar Rock Consultants, 19609 244<sup>th</sup> Avenue NE, Woodinville, WA 98077 stated that he could not speak to treaty rights, the Seahawks has committed to working with the tribes to make sure that if they want access to that area to fish, they would be provided the access. Again the tribes were not so concerned about being able to fish in this area, but the protection of the fish.

The 18" diameter buoys are a great hiding place for fish, however the predators also like shaded areas. Bass or larger trout will hide in the shaded areas and ambush young salmon as they go past. This is also typical of old docks where there are hidden cavities underneath, the benefit of this safety barrier is that they will be bright

colored and fish will show up against bright colored objects. Some of the new pilings that are being installed are being painted white or are made of steel to keep fish from hiding in and around them.

The material that the barrier is made of is very clean and is a standard material used in aquatic situations.

Kayren Kittrick, Community and Economic Development showed Exhibit 4, with a highlighted dotted line showing the sewer line and where it runs in this area and crosses to Mercer Island. She specifically asked them to have someone come out and mark the lines before the installation of the anchors just to be on the safe side.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:44 a.m.

### **FINDINGS, CONCLUSIONS & RECOMMENDATION**

Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### **FINDINGS:**

1. The applicant, Football Northwest LLC, filed a request for a Shoreline Conditional Use Permit as well as a Shoreline Substantial Development Permit.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 12 Seahawks Way (aka 5015 Ripley Lane North). The subject site is located west of Lake Washington Boulevard on the shoreline of Lake Washington. The subject site is the location of the Seahawks Headquarters and Training Facility.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of commercial, office or residential uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned COR (commercial, office or residential).
9. The subject site was annexed to the City with the adoption of Ordinance 1823 enacted in April 1960.
10. The subject site is approximately 16.56 acres.
11. The subject site is essentially flat and the lot includes the shoreline and lake surface.
12. The subject site contains both the Seahawks indoor training facility and office space as well as outdoor practice fields. Public access space is located on the north end of the large campus near a new dock.

13. The applicant proposes installing an approximately 1,000-foot floating safety barrier in the lake. The barrier would be located between 30 and 100 feet from the shoreline and be held in place by concrete anchors. The barrier would begin at the new dock and extend approximately 930 feet southwest to an existing pile and then turn shoreward for another approximately 100 feet. Six 500-pound pre-cast concrete anchors would be placed on the lake bottom. The anchors will settle into the soft bottom.
14. The lake's depth in the area defined by the proposed barrier is between 3 and 7 feet deep. The bottom contains mucky sediments, old pilings, rotted wood and possible contaminants as well as other potential hazards to navigation and swimming or walking.
15. The applicant had considered using other anchoring methods but determined the concrete blocks were most appropriate. The soft, mucky bottom limited the choices and the weights were a practical solution that would limit work in the muck that could potentially stir up contaminated sediments.
16. The barrier is intended to prevent entry into the defined area. The barrier would also breakup boat wakes thereby protecting the shoreline rehabilitation efforts.
17. The barrier would consist of a linked series of 18-inch diameter, 9 foot long polyethylene floats. Approximately 80 percent of the barrier would be above the waterline.
18. The applicant proposed using an orange colored barrier to maintain visibility. The ERC required that the barrier be a subdued color rather than the orange that was initially proposed. Color choice could affect salmonid predation. Darker colors could give predators a hiding place or a background color that could camouflage predators. Brighter or lighter colors would present fewer opportunities for hiding.
19. The system will need review, approval and permits from the Coast Guard and the Army Corps. The Coast Guard will determine if lighting is required to prevent night collisions.
20. If the barrier is located between 30 feet and 100 feet from the shoreline and extends approximately 1,000 linear feet between 30,000 square feet and 100,000 square feet of water surface defined by the barrier and the shoreline would be put off limits to boating, canoeing and kayaking.
21. The applicant indicated that unless the barrier were installed to keep people away significant disturbance to the shallow aquatic habitat and newly planted vegetation would occur. The applicant's narrative was submitted on June 27, 2008. It states:

"The primary purposes of the safety barrier are: 1) to protect environmental quality along the shoreline from excessive disturbance that could occur if boats and people were allowed free access to this area; 2) a public safety measure to help prevents boats, waders, and swimmers from contacting submerged piles, logs, and other artifacts.

Summer training camp, and to a lesser extent practice sessions during the football season will draw spectators. There are limited upland locations from where the outdoor practice facility can be observed so some people will come via Lake Washington in powerboats and other watercraft. This number could be substantial in the summer and early fall."
22. A Metro sewer line is located just south of the proposed shoreward portion of the barrier. That agency advised using caution around the line, which is in very shallow water.

23. The system is officially an "ArmorFloat Barrier System." It is designed to close off restricted areas or prevent boaters from entering unsafe or closed areas.
24. The work will be done in the time window specified by the state to avoid interfering with salmon activity in the lake.
25. Lake Washington's shoreline is classified as a Shoreline of Statewide Significance and therefore any development adjacent to it is subject to the City's Shoreline Master Program. This section of the shoreline is designated as an Urban Shoreline.
26. Construction would be done by barge, tugboat and work skiff and would occur waterward of the Ordinary High Water Mark.
27. The Muckleshoot Indian Tribe has submitted comments and their concerns regarding this project. The applicant has indicated that they would work with the tribe to ensure treaty rights are protected.

#### **CONCLUSIONS:**

1. The criteria for approving a Shoreline Conditional Use permit are twofold. There are City criteria and those City criteria require compliance with additional State criteria. Those criteria are as follows:

Renton: Section 4-9-190.I.5:

##### **5. Conditional Use:**

- a. Purpose: Upon proper application, a conditional use permit may be granted. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of uses can be expanded to include many uses.
- b. Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit will be granted subject to each of the following conditions:
  - i. The use must be compatible with other permitted uses within that area.
  - ii. The use will not interfere with the public use of public shorelines.
  - iii. Design of the site will be compatible with the surroundings and the City's Master Program.
  - iv. The use shall be in harmony with the general purpose and intent of the City's Master Program.
  - v. The use meets the conditional use criteria in WAC 173-27-160.

Washington State: WAC 173-27-160:

Review criteria for conditional use permits. The purpose of a conditional use permit is to

provide a system within the master program, which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses, which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

(b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

2. This shallow area of Lake Washington has generally been cluttered with debris, pilings, etc for a long time and there do not appear to be any prior efforts at restricting access to this area and with it restricting access to between 30,000 square feet and 100,000 square feet of water surface. Although, clearly the change in occupancy of the associated upland site to the Seahawks Training Facility has or will possibly change the complexion and/or number of boaters along the shoreline in this area. The applicant is also restoring the shoreline with vegetation, which they would like to protect from intrusions by errant walkers (potential trespass) or boat wakes. But does this change in upland use call for such an intrusive solution as the one proposed - approximately 1,000 feet of floating barrier? Might it be possible that less restrictive measures could be used before resorting to the closure of this area and the installation of an 18-inch high, 1,000-foot long barrier, of a potentially bright color and one that may

potentially be lighted at night?

3. The training center has only been open a very short time so that any conclusions on those who may attempt to get a close view from the water is not based on more than some level of conjecture. It might be possible to dissuade boats and others by less dramatic, less intrusive means than a one thousand foot (1,000 foot) floating barrier erected between 30 feet and 100 feet from the shoreline. This type of barrier is unprecedented. Nowhere else on the lake is such a barrier evident. This office believes that less drastic options should be tried before installing the proposed barrier and if those lesser measures fail then the barrier would be appropriate.
4. Although it remains undecided, as noted above, nighttime lighting might be needed. The Coast Guard will make a final determination. But if lighting is necessary, it will make the barrier even more intrusive. This office will speculate that such a substantial impediment running 1,000 linear feet and located between 30 feet and 100 feet from shore will have to be lighted to avoid collisions in the evening hours. The applicant mentioned that it will eventually be added to nautical or navigation charts but do casual boaters use such charts in Lake Washington? If they did then the debris, obstructions and impediments in the shallow water as well as the shallow water itself would or should be evident and a self-deterrent. This office does not outright oppose such a barrier if other means cannot overcome curiosity. But perhaps other means should be tried initially and if they fail after the first full year of operation of the training facility then the barrier could be installed.
5. Therefore, it appears reasonable to try to use warning signs on floats or buoys to warn off intruders as an initial method of providing a measure of safety. Then if that does not work, the barrier can be erected as proposed.
6. Again, if the barrier becomes necessary the criteria governing its location must still be satisfied and that discussion follows.
7. The area in which the subject site is located is zoned for and developed with COR uses including a new residential plat and the training facility. The barrier is unusual but might be analogized to the many docks and piers that extend out into the lake. Although those docks and piers do not limit access to as wide an area of the lake, they do limit navigation in some shoreline areas like this barrier would do.
8. The proposed barrier will limit access to the shoreline but this is not a public shoreline, although some of the surface waters are open to the public. The applicant has provided access to a portion of this shoreline near the north end of the property. It is a section of shoreline that is being restored and protecting native vegetation is appropriate. It will create some obstacles toward navigation but the submerged debris and piling effectively do that now in some areas.
9. This is an urban portion of the shoreline so the barrier is not intruding into a tranquil or natural area but it might still be intrusive and more so if lighted at night.
10. The next series of criteria are contained within the Washington Administrative Code. One of the paramount goals is to protect the ecology of the shoreline. In this case, the barrier will attempt to protect native vegetation as well as protect public safety. The few concrete anchors will have limited impacts on the lake bottom. The barrier itself could harbor or camouflage salmon predators. Potentially barrier color could be used to limit predator impacts.
11. The upland lot, the training center, is private and it extends out into the lake. Private uses are permitted in this area of the shoreline. The barrier is certainly unprecedented but might be similar to the docks



and piers already in this area.

12. The comprehensive plan designates this area as suitable for commercial, office and residential uses. Screening off private property and protecting the public safety seems legitimate if less intrusive measures fail.
13. The proposed barrier will hopefully not create any significant adverse affects on the shoreline environment. It is intended to protect new vegetation and if an approximate color can be selected limit predation on salmon.
14. There really is no way to judge the cumulative impact or impacts. It is unlikely that similar barriers will be installed along the lakeshore but, again, this proposal could create a precedent.
15. Since barriers are neither permitted nor prohibited outright they may be reviewed under the Conditional Use criteria.

**RECOMMENDATION:**

The Conditional Use Permit and the Shoreline Substantial Development Permit for the barrier should be approved if other measures do not prevent intrusion into the area and it is approved subject to the following condition:

1. For one training season the applicant shall use warning signs on floats or buoys or other similar measures to warn off intruders as an initial method of providing a measure of safety. If those measures do not work, the barrier can be erected as proposed.

ORDERED THIS 10<sup>th</sup> day of November 2008.

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FRED J. KAUFMAN  
HEARING EXAMINER

TRANSMITTED THIS 10<sup>th</sup> day of November 2008 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Marty Wine, Assistant CAO	Transportation Division
Gregg Zimmerman, PW Administrator	Utilities Division
Alex Pietsch, CED Administrator	Neil Watts, Development Services
Jennifer Henning, Planning Services	Janet Conklin, Development Services
Stacy Tucker, Planning Services	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., November 24, 2008.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the

discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., November 24, 2008.**

**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.**

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.



Examples of Armorfloat

